

① (f 2002) 14

IN THE HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench

MISC. civil case NO: 149 /2004

APPLICANT : **M/s SHYAM LAL AGRAWAL,**
Engineers & Builders,
"ANAND" Station Road, Raigarh
Through its Partner Shri Shyamlal Agrawal,
Raigarh, Distt: Raigarh (CG)

-Vs-

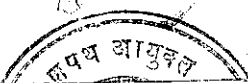
RESPONDENTS : 01. **The Chairman cum Managing Director**
South Eastern Coalfields Limited,
Seepat Road, PO: SECL, Bilaspur (CG)

02. The General Manager (Civil),
South Eastern Coalfields Limited,
Seepat Road, PO: SECL, Bilaspur (CG)

03. The Chief General Manager,
South Eastern Coalfields Limited,
Gevra Area, Distt: Korba (CG)

P.R. No. 2632109
Presented by Shri. Sanjay Kumar
dated 24.11.04

APPLICATION UNDER SECTION 11 (6) OF THE ARBITRATION
AND CONCILIATION ACT, 1996, FOR APPOINTMENT OF SOLE



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.C.C.No. 149 सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	10.05.2005 (In Chamber) Shri Sanjay S. Agrawal, counsel for the petitioner. Shri Vinay Harit, Sr.Advocate with Shri Swarnkar, for the respondents. This is an application u/s 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, 1996) for appointment of Sole Arbitrator. The contention of learned counsel for the petitioner is that since the respondent has failed to appoint an independent Sole Arbitrator to resolve the disputes in terms of the provisions of agreement, therefore, the petitioner has filed this application. It relates to the award of work, for construction of Portal Columns and other Structures, by the respondent to the applicant vide work order No.CE©/BSP/WO/GVR/856-63, dated 02-06-1998 at a contract value of Rs.2,53,07,830=00. After issuance of the notice, respondents have caused their appearance. They have filed reply/objection with a prayer that neither the contract nor the general terms and conditions of the contract contain any arbitration clause, therefore, this matter	

मामला क्रमांक

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	cannot be referred to the arbitrator. It is further contended that the applicant is wrongly trying to rely on note at the foot of the standard general terms and conditions which stipulates that in case of any ambiguity the Civil Engineering Manual shall be referred to and the provision in the CEM shall prevail upon. He submits that the said manual has to be referred to only in case of an ambiguity in the contract itself for clarification of such an ambiguity and in general an arbitration clause has been deliberately obviated in full conscious knowledge of the parties to the contract. Learned counsel refers to a decision of the Apex Court reported in the matter of <u>Tamilnadu Electricity Board -Vs- Sumathi and others reported in (2000) 4 SCC 543</u> and submits that there is no provision in the Act for reference of disputes to arbitration by intervention of the Court in the absence of an arbitration agreement between the parties. On the other hand, learned counsel for the applicant refers to Page 60 of the Paper Book in which the note appended to general terms and conditions shows that in case of any ambiguity	

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मामला क्रमांक

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	the Civil Engineering Manual shall be referred to and the provisions in CEM shall prevail upon. Clause 14 of the aforesaid manual stipulates regarding the settlement of disputes by arbitration. It has been held by the High Court of Madhya Pradesh in case of <u>M/s.G.R.D. Profiles Ltd., -Vs- M.P.E.B. and another reported in 2004 (3) MPHT Pg.34</u> that if <i>prima facie</i> the arbitration clause to resolve dispute exists between the parties then the validity, existence and applicability of the clause along-with limitation, jurisdiction and all contentious issues are not to be decided by the nominee, but under section 16 of the Act by the Arbitrator. This has been held relying on decision of the Apex Court in case of <u>Hythro Power Corporation Ltd., -vs- Delhi Transco Ltd., 2003 Arb. W.L.J 469 (SC)</u> that the Chief Justice or his designate u/s 11 of the Act exercises purely administrative function and it is not open to him to discharge any judicial function of adjudicating any dispute regarding the "existence of arbitration agreement".	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मासिका क्रमांक

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	It has also been held by the Apex Court in the matter of <u>Food Corporation of India -Vs- Indian Council of Arbitration and others reported in (2003) 6 SCC 564</u> that the legislative intent underlying the Act is to minimize the supervisory role of the courts, in arbitral process and quick nomination/ appointment of arbitrator, leaving all contentious issues to be decided by him. If we examine the present case in the light of the above decisions rendered by the Apex Court as well as the High Court of Madhya Pradesh, it appears that it is not a case of this nature in which it can be said straight way that no proceedings for appointment could be drawn as there appears to be no arbitration agreement between the parties. In the opinion of this Court, the matter is such that it needs proper adjudication by the arbitrator in relation to the "existence of arbitration clause." In the result the petition is allowed and the case for reference to the Arbitrator is held to be made out. I hereby appoint Hon'ble Mr. Justice P.C. Naik, former Judge of High Court of Chhattisgarh, resident of 238/15, Napier	

मायला क्रमांक

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Town, Jabalpur (M.P) as the Sole Arbitrator in exercise of powers conferred u/s 11(6) of the Arbitration and Conciliation Act 1996. The Arbitrator will settle his terms and conditions including the remuneration. The Registry is directed to intimate Hon'ble Mr. Justice P.C. Naik (Retd) about his appointment as Arbitrator and send all the papers furnishing the address of the parties. The parties are also directed to approach Hon'ble Mr. Justice P.C.Naik (Retd.) at Jabalpur and submit papers and take part in the proceedings.	Sd/- Sunil Kumar Sinha Judge

/Rao/